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State v. Taylor Respondent's Brief Dckt. 45217

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	Nos. 45217 & 45218
Plaintiff-Respondent,)	
)	Twin Falls County Case Nos.
v.)	CR-2016-7501 & 2016-10599
)	
ANITA MARIE TAYLOR,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Taylor failed to establish the district court abused its discretion by imposing concurrent, unified sentences of life, with eight years fixed, upon her guilty pleas to grand theft, two counts of forgery, criminal possession of a financial transaction card, possession of forged stolen notes, bank bills, or checks, and possession of amphetamine, with the persistent violator enhancement?

Taylor Has Failed To Establish The District Court Abused Its Sentencing Discretion

After Taylor pled guilty to grand theft with the persistent violator enhancement in case 45217 and to two counts of forgery, criminal possession of a financial transaction card, possession of forged stolen notes, bank bills, or checks, and possession of a controlled substance,

with the persistent violator enhancement, in case 45218, the district court imposed concurrent, unified sentences of life, with eight years fixed. (R., pp.166-71, 340-47.) Taylor filed a timely notice of appeal in each case. (R., pp.178-82, 365-69.)

Taylor asserts her sentences are excessive in light of her difficult childhood, substance abuse issues, mental health issues, accountability, and remorse. (Appellant's Brief, pp.3-5.) The record supports the sentences imposed.

When evaluating whether a sentence is excessive, the court considers the entire length of the sentence under an abuse of discretion standard. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 687, 391 (2007). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. McIntosh, 160 Idaho at 8, 368 P.3d at 628 (citations omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution. Id. The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. Id. at 9, 368 P.3d at 629; State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998) (court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). "In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ." McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting Stevens, 146 Idaho at 148-49, 191 P.3d at 226-27). Furthermore, "[a] sentence fixed within the limits

prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.” Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

The maximum prison sentence for grand theft is 14 years; the maximum prison sentence for forgery is 14 years; the maximum prison sentence for possession of a financial transaction card is five years; the maximum prison sentence for possession of forged stolen notes, bank bills, or checks is 14 years; the maximum prison sentence for possession of amphetamine is seven years; and with each count the persistent violator enhancement can extend the maximum prison sentence to life in prison. I.C. §§ 18-2408(2)(a), -3604, -3128(3), -3605, 37-2732(c)(1), 19-2514. The district court imposed concurrent, unified sentences of life in prison, with eight years fixed, all of which fall within the statutory guidelines. (R., pp.166-71, 340-47.)

Taylor has a long criminal history that includes 17 misdemeanor convictions, eight felony convictions, and dozens of misdemeanor and felony charges. (PSI, pp.24-31.) In the two current cases Taylor has amassed six new felony convictions, five are for theft and forgery related crimes and one is for possession of amphetamine. (R., pp.166-71, 340-47.) The amphetamine case arose when officers searched Taylor and the car she was in and found ½ an Adderall pill in her purse and 89 Adderall pills separated into five small baggies, a used syringe, a bag of unused syringes, and other paraphernalia items in the car. (PSI, p.22.) As evidenced by her criminal history, Taylor clearly has a propensity to steal people’s property, commit forgery, and abuse substances, thus demonstrating that she is not safe to be in the community. Taylor’s claims of accountability ring hollow in light of her claims to the presentence investigator that her version of her grand theft offense was based on “facts” that were “told to [her] by police,” and that she had “very little memory of going [to the store] or of what I took.” (PSI, p.24.) Taylor also stated that she “shoplifted clothes, diapers, food & forged a check at Smith’s pharmacy for my

medication & a phone card,” but no children’s items were located in the vehicle when she was arrested, nor were any children’s items listed on any of the store receipts. (PSI, p.40; 5/8/17 Tr., p.23, L.11 – p.24, L.5.) The district court found Taylor’s attempts to justify her actions as being motivated by the need to take care of her family “pure nonsense” and stated, “That tells me that you have yet to accept responsibility for what your problems really are in life with regard to theft.” (5/8/17 Tr., p.36, Ls.16-20.) Pursuant to a mental health evaluation, Taylor was diagnosed with major depression, recurrent, mild with anxious distress; opioid use disorder, severe; and other stimulant use disorder, severe, currently in sustained remission. (PSI, p.16.) With these diagnoses, Taylor was not eligible for mental health court because she did not have a serious and persistent mental illness. (PSI, p.8.)

At sentencing, the district court addressed Taylor’s ongoing criminal conduct and the danger she presents to the community. (5/8/17 Tr., p.34, L.9 – p.38, L.3.) The district court also set forth its reasons for imposing Taylor’s sentences and stated:

Ms. Taylor, it’s one thing to go out and steal somebody’s checkbook and write a check, steal something from somebody, or write a bad check, but when I see that over and over and over and over and over, it tells me that there is a fundamental problem with that person.

(5/8/17 Tr., p.34, L.25 – p.35, L.4.) The state submits Taylor has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm Taylor's convictions and sentences.

DATED this 15th day of December, 2017.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of December, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

MAYA P. WALDRON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 THE COURT: Mr. Willmore?

2 MR. WILLMORE: Your Honor, I had a note passed
3 up to me, the restitution is totaled, and it's in the
4 total amount of \$2,133.95.

5 THE COURT: That includes the drug restitution?

6 MR. WILLMORE: Yes.

7 MR. ESSMA: I don't think there's any
8 objection, Your Honor.

9 THE COURT: So that we're clear in this case,
10 the sentences or the pleas that this Court has before it
11 in case 10599 are two counts of forgery, one count of
12 criminal possession of a financial transaction card, one
13 count of possession of forged instruments, and one count
14 of possession of a controlled substance, plus a
15 persistent violator enhancement.

16 And in this 7501, one count of grand theft plus
17 persistent violator enhancement.

18 I have read hundreds, if not probably close to
19 well over a thousand, PSIs during my time on the bench,
20 and I'm trying to remember whether I have ever seen a
21 PSI on a defendant that has the pure volume of theft
22 offenses over an extended period of time as I have in
23 this case. I don't think I have. Always difficult to
24 say that because one forgets over time.

25 Ms. Taylor, it's one thing to go out and steal

34

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1 somebody's checkbook and write a check, steal something
2 from somebody, or write a bad check, but when I see that
3 over and over and over and over and over, it tells me
4 that there is a fundamental problem with that person.
5 Some people can explain that as a result of mental
6 health issues. My answer to that question is, well, if
7 you've got -- that's what's causing you to commit
8 crimes, and you can't deal with the mental health
9 issues, we solve that problem by putting you in the
10 penitentiary. Some people say, well, it's because of
11 drug addiction problems. I agree with Mr. Essma just as
12 well, that those who get involved in the drug world tend
13 to support their habits through theft. I don't see that
14 happening in this case.

15 I found it very interesting what was presented
16 in terms of a laundry list of what was purchased, you
17 know? If I was going to go out and use, those don't
18 look to me like real saleable items of property to
19 support drug habits. Maybe they are. I don't know.
20 Doesn't make any difference, just not supported. You
21 know, the third option is that people just have a
22 fundamental problem, basic instinct that they're just
23 going to steal things, and that's the way it is.

24 I don't know which of those problems is you. I
25 think there could be argument made for any one of them.

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1 Any combination thereof. What I do know is that this is
2 a -- has had a significant impact upon not only the
3 people in this community but also particularly the
4 victim who is sitting here in the courtroom. When you
5 have things stolen from you, some of it's replaceable,
6 some of it's not. It's a violation of basic rights that
7 we have as citizens to have our own property.

8 This is certainly not a probation case. It's
9 certainly not a rider case, in my view. You know, your
10 daughter went to Idaho State Penitentiary for seven,
11 almost eight years for doing basically the same things
12 you're doing. I'm not here to sentence you for your
13 daughter's crimes, but you were clearly and intricately
14 involved in her activities as well as your own
15 activities.

16 Mr. Willmore points out your attempt to justify
17 this, well, I was buying things for my grandchildren.
18 Nonsense. Pure nonsense. That tells me that you have
19 yet to accept responsibility for what your problems
20 really are in life with regard to theft.

21 I think you have been given every reasonable
22 chance at rehabilitation this society can offer. The
23 mere fact that you can go along for years, live a law
24 abiding life, then go back to crime again, and then live
25 a law abiding life, then go back to crime again, tells

1 me that whatever rehabilitation efforts were made just
2 didn't work, and it's not because of the fault of the
3 system. That's why we put people on probation sometimes
4 is in order to have -- trying to get people to rethink
5 the way they think, and that has not worked for you, and
6 I don't think it's going to work for you in the future.
7 That's why I'm going to send you to the penitentiary
8 today.

9 It is the judgment of the Court that I will
10 order a sentence as follows: Court costs as required by
11 statute and rule. You are not required to provide a DNA
12 sample. You've already done that. I will order
13 restitution on all of these counts of \$2,133.95. I will
14 order a sentence somewhat different than what the State
15 is requesting: A unified sentence of life in the Idaho
16 State Penitentiary, consisting of an eight-year fixed
17 period of time followed by an indeterminate period of
18 time.

19 Persistent violators have to mean something,
20 and that's why the legislature has authorized this Court
21 to impose life sentences. You are, what, 55, 54 years
22 of age at this point in time? I don't think you will
23 serve that amount of time. I don't think you'll serve a
24 life sentence in the Idaho State Penitentiary if you do
25 what you need to do. But I think you need to spend a

1 considerable period of time, and that's eight years. I
2 will give you credit for time served since you've been
3 incarcerated. We'll get that calculated.

4 You do have the right of appeal in this case --
5 oh, all of these counts are running concurrently, in
6 other words, at the same time. There's no reason to
7 have -- mix them all up and make consecutive some; it's
8 all the same effect. So it's clear, the five counts in
9 the one case and the one count in the second case are
10 running concurrent. That is my intention.

11 I'll remand your custody to the sheriff at this
12 time for transport in the penitentiary system. As I
13 said, you have not waived your right of appeal in this
14 case. If you want to perfect that appeal, just let
15 Mr. Essma know, okay?

16 THE DEFENDANT: Thank you.

17 THE COURT: Good luck to you.

18 (End of proceedings at 4:05 p.m.)

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